

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7078 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHRIPAL DEVSHI SHAH

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 08/04/99

ORAL JUDGEMENT

This petition has been filed for quashing the condition no. 3 contained in Government resolution dated 5th September, 1975 at Annexure "C" to the petition and also seniority list of the Junior Scientific Assistant published by the respondent no.1 dated 6.6.91. The

petitioner was appointed as Research Assistant (Soil Survey Organiser (Irrigation) on 25th July, 1968. He was promoted to the post of Junior Scientific Assistant on 9th February, 1979. Thereafter, he was promoted to the post of Senior Scientific Assistant on 19th March, 1981. The Government of Gujarat passed a resolution dated 8th January, 1979 for unification of the cadre of Junior Scientific Assistant, and Soil Classifiers and Soil Analysts into one cadre of Junior Scientific Assistant and their seniority including Junior Scientific Assistant already promoted as Senior Scientific Assistant should be determined with reference to continuous date of joining to the respective posts. Another resolution was passed by the Government of Gujarat on 5th September, 1979 in respect of unification of cadres of Junior Scientific Assistant and Research Assistant into one cadre of Junior Scientific Assistant subject to three conditions and the third condition is that those who have joined as Research Assistants before 1.1.73 should be treated as Junior Scientific Assistants from 1.1.73, if they are not promoted as Junior Scientific Assistants before 1.1.73 and this third condition has been challenged by the petitioner in this petition.

2. The Deputy Secretary, Narmada, Water Resources and Water Supply Department, Gandhinagar has filed affidavit-in-reply to the petition contending that the pay scale of Research Assistant was revised to that of Rs.425-700 with effect from 1.1.1973 which was equivalent to that of Junior Scientific Assistant. Hence, the above condition was provided in the Government Resolution in the public interest to avoid further administrative complications. Though the petitioner joined as Research Assistant from 3rd July, 1968, his seniority was required to be considered in the unified cadre not from the date he joined as Research Assistant from 3rd July, 1968 but from 1st January, 1973 in the promotion cadre of Junior Scientific Assistant alongwith Research Assistant. Hence the impugned condition is neither discriminatory nor violative of Articles 14 or 16 of the Constitution of India. The petition has been filed after lapse of 8 years after issuance of the orders of unification of the cadres in the year 1979. The petitioner was not a Research Assistant when the orders of unification were passed on 5th September, 1979 as he was already promoted as Junior Scientific Assistant on 8.3.1979.

It is further stated that the petitioner ought to have raised his grievances before appropriate authority at the relevant time and that could have been

decided by the appropriate authority. But after lapse of more than eight years, this Court cannot decide the matter in dispute.

3. The contention of the learned counsel for the petitioner is that the cadres of Junior Scientific Assistant and Research Assistant were unified into one cadre of Junior Scientific Assistant and the cadre of Junior Scientific Assistant (Soil classification and Soil Analyst) were united into one cadre of Junior Research Assistant. As such, the petitioner was appointed in 1968 and he was promoted to the cadre of Junior Scientific Assistant on 9.2.79, but he has been treated as Junior Scientific Assistant from 1.1.73. The other persons, i.e. Soil Classifiers and Soil Analysts who were appointed after 1968 they have been given the cadre of Junior Scientific Assistant. As such, the petitioner is less senior from other persons who have been amalgamated into one cadre of Junior Scientific Assistant. As condition no. 3 provides that those who had joined as Research Assistant before 1st January, 1973, were to be treated as Junior Scientific Assistant from 1st January, 1973, if they have not already been promoted as Junior Scientific Assistant before 1st January, 1973. Even if the petitioner joined as Research Assistant on 3rd July, 1968 by the order of the respondent no. 2 dated 25th July, 1968 the petitioner's seniority would be counted in the unified cadre not from the date on which the petitioner joined as Research Assistant from 3rd July, 1968 but from 1st January, 1973 and that condition is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

3. I have carefully considered the arguments of the learned counsel for the petitioner. The learned counsel for the petitioner also submitted the petitioner was not furnished with the copy of seniority list of Senior Scientific Assistant. In the affidavit-in-reply, it has been stated that this fact is wrong and a copy of the seniority list of SSA was published on 31st March, 1984 by the Director, Vadodara. The Soil Survey Officer in turn has forwarded a copy of the seniority list of Scientific Assistant to the petitioner by his letter dated 1.1.1985 through Deputy Soil Survey Officer, the Soil Survey Sub division, Palanpur under which the petitioner was serving.

4. The petitioner was promoted to the post of Junior Scientific Assistant on 9.2.1979, but by virtue of the Government Resolution the petitioner has been given seniority from the due date i.e. on 1.1.1973. If

the petitioner had any grievance, he could have raised the same before appropriate authorities concerned within a specific period and the concerned appropriate authority after considering the entire facts and circumstances could have passed appropriate orders. As the petitioner has not availed that alternative remedy, at the relevant time, now it is not proper for this Court to direct the appropriate authorities to re-consider the matter at this stage after such a long span. Therefore, this petition lacks merits and it deserves to be dismissed. Accordingly, the petition is dismissed. Rule is discharged with no order as to costs.

...
***darji